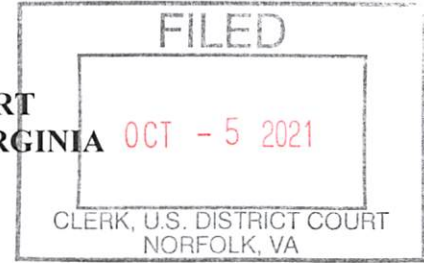


**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



JOSEPH EDWARD WASHINGTON. (#1107093),

Petitioner,

v.

ACTION NO. 2:21cv34-RAJ-DEM

**HAROLD W. CLARKE,
Director, Virginia Department of Corrections,**

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of petitioner's constitutional rights pertaining to his convictions in Westmoreland County Circuit Court for strangulation, abduction, misdemeanor assault, extortion, petit larceny, and misdemeanor destruction of private property. As a result of the convictions, petitioner was sentenced to serve thirteen years and twelve months in prison. Petitioner also filed a Motion for Leave to Proceed in Forma Pauperis (ECF No. 2), which the court granted (ECF No. 13).¹

The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed August 26, 2021 recommends dismissal of the petition without prejudice for Petitioner's failure to exhaust available state court remedies. The Report and

¹ Because Petitioner's Motion to Proceed in Forma Pauperis was eventually granted, the Report and Recommendation for Dismissal on the basis of Washington's in Forma Pauperis request filed March 25, 2021 (ECF No. 8) is hereby TERMINATED AS MOOT.

Recommendation advised Petitioner of his right to object and the time limit for doing so. The court has received no objections, and the time for filing objections has now expired.

Accordingly, the court does hereby accept the findings and recommendations set forth in the Report and Recommendation filed August 26, 2021, and it is therefore ORDERED that Respondent's Motion to Dismiss (ECF No. 16) be GRANTED, and that the petition (ECF No. 1) be DENIED and DISMISSED without prejudice.

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); see Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); Miller-El v. Cockrell, 537 U.S. 322, 335–38 (2003); Slack v. McDaniel, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk is directed to mail a copy of this Final Order to Petitioner and provide an electronic copy of the Final Order to counsel of record for Respondent.

Norfolk, Virginia
October 5, 2021



RAYMOND A. JACKSON,
UNITED STATES DISTRICT JUDGE